



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD**  
ATTORNEY GENERAL

March 11, 1953

Hon. C. H. Cavness  
State Auditor  
Capitol Station  
Austin, Texas

Opinion No. S-17

Re: Legality of treating funds the  
United States Government is  
obligated to pay for student  
tuitions as being moneys col-  
lected for the purpose of de-  
termining public junior college  
appropriations.

Dear Sir:

You have requested an opinion of this office on three ques-  
tions involving the construction of Sections 3(a) and 4 of Article IV of  
House Bill Number 426 of the 52nd Legislature. This bill was enacted  
as Chapter 499, Acts of the 52nd Legislature, 1951, page 1228. You ask  
in substance the following questions:

1. In view of the provisions of Sections 3(a) and 4 of Ar-  
ticle IV, Chapter 499, Acts of the 52nd Legislature, may the semester  
hours taken by military enlisted personnel be counted in arriving at  
the per capita apportionment for the colleges attended by such person-  
nel? The tuition and fee expenses of military enlisted personnel are  
paid in part by the student and in part by the Government, in payments  
made directly to the school.

2. In view of the provisions of Sections 3(a) and 4 of Ar-  
ticle IV, Chapter 499, Acts of the 52nd Legislature, are military enlisted  
personnel who are non-residents of Texas eligible to have their semester  
hours counted in determining the apportionment due the junior college  
from the State per capita appropriation? Such students pay a part of  
their tuition and fee expenses when they enroll. The remaining expenses  
are paid to the school directly by the Government at the conclusion of  
each semester.

3. Some of the non-resident students attending State-supported junior colleges pay their non-resident tuition fees in periodic installments through the semester. May the non-resident tuition fees be counted in proportion to the amount paid prior to November 1st in determining the school's per capita apportionment?

The applicable portions of Sections 3(a) and 4 of Article IV, Chapter 499, Acts of the 52nd Legislature, 1951, page 1228 at pages 1444-1445, provide as follows:

"Sec. 3. It is further provided that to be eligible for and to receive a proportionate share of this appropriation, a Public Junior College shall:

"(a) Prior to November 1st of each year, collect matriculation and other session fees not less than the amounts provided for by law for State-supported institutions of higher learning (for full-time and for part-time students) from each enrolled student, except this shall not apply to any student who may be exempt from the payment of such fees by State law;

"Sec. 4. . . . The term 'full-time student equivalent' as herein used shall be defined as a student taking fifteen (15) semester hours of approved courses; and the number of full-time student equivalents for any Junior College to be benefited by this Article shall be determined by dividing by fifteen (15) the total number of semester hours of approved courses carried by all eligible students as of November 1st in each fiscal year, except that not more than eighteen (18) semester hours being carried on that date by any individual student shall be counted, nor shall the semester hours carried by any student in excess of a total of sixty-six (66) semester credit hours earned in a Public Junior College be counted; and provided further that the count of semester hours shall not include those being carried by any students who have not made timely compliance with the requirements of Section 3(a) above, nor those being carried by any students (except Voca-

tional Rehabilitants) whose tuition and fee expenses are paid by the United States Government."

It is evident from a reading of Article IV of Chapter 499, Acts of the 52nd Legislature, 1951, together with Section 4 of Article 2654b-1, Vernon's Civil Statutes, that it was the legislative intent to provide a per capita apportionment for each student enrolled in a junior college. The State would pay the apportionment directly to the school, except in certain instances in which the government would pay directly to the school the cost of instruction for particular students. Att'y. Gen. Op. V-1507 (1952). The present question covers an instance where the government pays the tuition and fee expenses, in part, of certain military enlisted personnel, such payments being made directly to the school. By express words in the appropriation act students who have their tuition and fee expenses paid by the United States Government cannot have their semester hours considered in determining the per capita apportionment to be paid to the school. The fact situation differs from that discussed in Attorney General's Opinion No. V-1507 (1952) in that the present payments by the Government are directly to the school, while the payments by the Government under the "G. I." (Teague) Bill, discussed in Attorney General's Opinion No. V-1507 (1952) were made directly to the student. It would seem that the legislature intended that each student should receive a per capita apportionment to the school to cover his costs of instruction. It also appears to be the legislative intent that in certain circumstances the costs of such instruction were not to be paid by the State. One of those circumstances is when the tuition and fee expenses of a student are paid directly to the school by the United States Government.

Since we have answered the first question in the negative, the same reasons compel the answer to the second question in the negative.

The third question involves civilian non-resident students attending State-supported junior colleges. Section 3(a) of the Appropriation Act provides that a Public Junior College shall, prior to November 1st of each year, collect matriculation and other session fees not less than the amounts provided for by law (Art. 2654c, V.C.S.) from each enrolled student (with certain exceptions not here involved.) Section 4 of

the Appropriation Act provides that in determining the per capita apportionment to which each school is entitled the semester hours carried by eligible students as of November 1st will be counted (emphasis added), and this limitation is repeated in a negative proviso in the conclusion of the same section, "... provided further that the count of semester hours shall not include those being carried by any students who have not made timely compliance with the requirements of Section 3(a) above . . ." A non-resident student such as you inquire about is not an "eligible" student until his enrollment is completed. His enrollment is not completed until his fees are paid. If the fees are not paid prior to November 1st the student is not eligible to have his semester hours considered in determining the credit hours earned by his school. Until the student becomes "eligible" by paying all of his fees, none of his hours may be counted as hours of an eligible student.

#### SUMMARY

The semester hours carried by a student in a Public Junior College who has his tuition and fee expenses paid directly to the school by the United States may not be considered in determining the semester credit hours earned by the school.

A non-resident student whose matriculation and other session fees are not paid in full prior to November 1st is not an eligible student whose semester hours may be considered in determining the credit hours earned by his school.

APPROVED:

J. C. Davis, Jr.  
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Yours very truly,

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